

**DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 99-0058P
Gross Income Tax
For The Years: 1994, 1995**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration – Negligence Penalty

Authority: IC 6-8.1-6-4, IC 6-8.1-3-4, 45 IAC 15-11-2, *Moore v. State Tax Assessor*, 504 A.2d 610, (Me. 1986), *United States v. Carlson*, 260 F.Supp. 423 (E.D. N.Y. 1966).

The Taxpayer protests the Department's assessment of a negligence penalty.

STATEMENT OF FACTS

The Taxpayer's principal business is as a worldwide marketing representative for sports, music and entertainment personalities, or for the estates or heirs of deceased personalities. The Taxpayer functions as either the exclusive or non-exclusive representative for these clients by actively obtaining, servicing, and negotiating licensing agreements for use of the personality by third parties.

During a prior audit for the years of 1991 through 1993, the Taxpayer was assessed gross income tax and penalties. The Taxpayer protested the assessment and prior to the Letter of Finding being issued, the Taxpayer was audited for gross income for the years of 1994 and 1995. The Taxpayer was assessed for the same issues that they were protesting from the 1991 to 1993 audit. The Letter of Finding for the periods of 1991 to 1993 partially sustained the Taxpayer's protest of the gross income assessments and sustained the protest against the negligence penalties. The Taxpayer protests the negligence penalty assessed on an income tax audit performed for the calendar years 1994 and 1995. The Letter of Finding for 1994 and 1995 denied the Taxpayer's protest of the negligence penalty and stated that the Taxpayer should have filed amended returns. More facts will be provided as necessary.

I. **Tax Administration: Negligence Penalty**

DISCUSSION

Pursuant to 45 IAC 15-11-2(b):

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Taxpayer argues that there is no duty to file an amended return. They state: "A 'duty' is a required, mandatory action. A taxpayer cannot be 'negligent' unless it failed to take an action that it had a duty to take." Yet, there is a duty to provide the Department with accurate returns. IC 6-8.1-6-4 states: "All returns and forms that a person is required to file under the provisions of law relating to any of the listed taxes must be certified true under penalties of perjury." Although not specifically addressed in Indiana, other jurisdictions have interpreted that a taxpayer's duty to respond truthfully as a continuing one. *See: Moore v. State Tax Assessor*, 504 A.2d 610, (Me. 1986), *United States v. Carlson*, 260 F.Supp. 423 (E.D. N.Y. 1966). The Taxpayer points out in his argument that the Internal Revenue Service treats amended returns as part of the original return. The State of Indiana also treats amended returns as part of the original return. This allows taxpayers to make adjustments or corrections to their original return when they become aware of the need to make adjustments or corrections. In addition, "[t]he department has the sole authority to furnish forms used in the administration and collection of the listed taxes." IC 6-8.1-3-4. The Department provides amended tax returns for those taxpayers that must make changes or revisions to their original returns in order to comply with IC 6-8.1-6-4.

The Taxpayer also argues that there is no duty to file an amended return when the taxpayer learns of adjustments which creates an overpayment in favor of the taxpayer. A penalty is imposed as a coercive or deterrent devise. In the case of an overpayment, imposing a penalty would be redundant.

Upon receiving the Letter of Finding for 1991 through 1993, the Taxpayer was aware that the 1994 and 1995 tax returns were incorrect. Consequently, the Taxpayer should have amended their 1994 and 1995 tax returns in order to comply with IC 6-8.1-6-4.

FINDING

The Taxpayer's protest is respectfully denied.